



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. CRIMINAL APPLICATION NO. 286 OF 2003**

**ABOUD ROGO MOHAMED ..... APPLICANT**

**VERSUS**

**THE HON. THE ATTORNEY GENERAL.... RESPONDENT**

**RULING**

The applicant applied for bail pending trial, after he had been charged with an offence of ***“Harbouring a person who is unlawfully present in Kenya, contrary to Section 13(2)(d) of the Immigration Act, Cap 172, Laws of Kenya”***. He was charged before the Chief Magistrate’s court Nairobi.

The affidavit tabled in the Chief Magistrate’s court, Nairobi averred inter alia that ***“investigations were still going on, with a view to arresting the person said to have been harbored by the applicant”***. Because of this, the applicant was refused bail pending trial.

The matter came to me during the court vacation, and once more the State opposed the release of the applicant on bail.

I then asked for an up-date report from the Investigating Officer, just to see how things were going and or developing. I got a further affidavit from the Investigating Officer, in which he averred, inter alia, that he was still ***“carrying out investigations, as the person who was harbored by the accused is still at large”***.

When I consider the evidence on record so far, I have come to the conclusion that no new evidence has come up from the police investigating the matter, to warrant the continued detention of the applicant in custody, to await his trial.

My attention was drawn to a court file H.C. Misc. Application No. 274 of 2003, wherein the applicant was charged in the lower court with the same offence as this applicant. His application to be released on bail pending trial was rejected by the Chief Magistrate, but he was released on bond by the High Court.

Taking all factors into consideration, I have decided to release the applicant ABOUD ROGO MOHAMED on a bond of Kshs.100,000/= plus two sureties of Kshs.300,000/= each.

Secondly, the applicant has to deposit his passport or any travel documents he holds, with the Chief Magistrate's court, Nairobi. Furthermore, as he is a resident in LAMU, I direct the applicant to report to the CID officers in Lamu, every Monday moving until the trial in Nairobi's Chief Magistrate's court commences. Once the trial begins, the applicant will be under the jurisdiction of the Chief Magistrate's court who will then be at liberty to enforce any other terms.

The Deputy Registrar attached to the Chief Magistrate's court, Nairobi, should examine and approve or reject the sureties.

**J. ALUOCH**

**JUDGE**

**13.5.2003**

Coram : Aluoch, J

Moibi for Maobe for the applicant

Monda for the respondent

**By Court**

Ruling read in presence of all parties.

**J. ALUOCH**

**JUDGE**